

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALIGN TECHNOLOGY, INC.,

No. C-05-2948 MMC

Plaintiff,  
v.

**ORDER GRANTING DEFENDANT  
ORTHOCLEAR HOLDINGS, INC.'S  
MOTION FOR SUMMARY JUDGMENT;  
VACATING HEARING**

ORTHOCLEAR, INC. and ORTHOCLEAR  
HOLDINGS, INC.,

Defendants

Before the Court is defendant OrthoClear Holdings, Inc.'s ("Holdings") motion for summary judgment, pursuant to Rule 56 of the Civil Rules of Civil Procedure. Plaintiff Align Technology, Inc. ("Align") has filed opposition, to which Holdings has replied. Having considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the papers, VACATES the hearing scheduled for August 18, 2006, and rules as follows:

1. To the extent Align's claims against Holdings are based on a theory that Holdings itself engaged in any of the wrongful conduct alleged in the complaint, Holdings is entitled to summary judgment. Align has not submitted sufficient evidence to raise a triable issue with respect to such theory of liability.

2. To the extent Align's claims against Holdings are based on an alter ego theory, Holdings is entitled to summary judgment. Align has not submitted sufficient evidence to

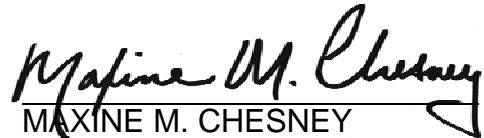
1 show, with respect to Holdings and its subsidiary OrthoClear, Inc., that a “failure to  
2 disregard their separate identities would result in fraud or injustice.” See Harris Rutsky &  
3 Co. Ins. Services, Inc. v. Bell & Clements, 328 F. 3d 1122, 1134 (9th Cir. 2003) (setting  
4 forth elements of “alter ego exception” to general rule that parent and subsidiary constitute  
5 separate entities).

6 **CONCLUSION**

7 For the reasons stated, Holdings’ motion for summary judgment is hereby  
8 GRANTED.

9 **IT IS SO ORDERED.**

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11 Dated: September 5, 2006

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MAXINE M. CHESNEY  
United States District Judge